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MEMO ENDORSED

April 13, 2011

VIA FAX-212-805-6326

Honorable Colleen McMahon
United States District Court
Southern District of New York
Daniel Patrick Moynihan US Courthouse
500 Pearl Street
New York, NY 10007

Re: Hazen et al., v. 621 Events LLC, et al
Index No.: 10cv7121

Dear Judge McMahon:

We represent Plaintiffs in the above-referenced action. I write to respectfully request a conference with the Court to address the blatant intimidation tactics Defendants are using to discourage putative FLSA Plaintiffs from opting in to this lawsuit. Specifically, as evidenced by the attached affidavit of Armando Acevedo, Defendants threatened the sole current employee who has joined the lawsuit with termination if he did not withdraw from the lawsuit.

"[W]hen a defendant contacts putative class members for the purpose of altering the status of a pending litigation, such communication is improper without judicial authorization." *In re Currency Conversion Fee Antitrust Litig.*, 351 F. Supp. 2d 237, 253 (S.D.N.Y. 2005). When there is an ongoing business relationship between putative class members and a defendant, such as an employer-employee relationship, there is a heightened threat of coercion by the defendant. *Belt v. Emcare, Inc.*, 299 F. Supp. 2d 664, 658 (E.D. Tex. 2003) (citing *Kleiner v. First Nat. Bank of Atlanta*, 751 F.2d 1193 (5th Cir. 1985)). A court may remedy a defendant's improper communications with putative class members in several ways, including restricting future communications, invalidating exclusion requests that were a product of the improper communications, and requiring that corrective notice be sent to class members and posted in a public place. See *Kleiner*, 751 F.2d 1193; *In re Currency Conversion Fee Antitrust Litig.*, 361 F. Supp. 2d at 252; *Belt*, 299 F. Supp. 2d at 664-670.

*Request for
confidential
order*

4/14/2011
Please have (1) Mr. Lewis and (2) my court room prepared
in my courtroom for me to be examined by Plaintiff's Defendants
at 10 AM on April 18.
I am advised that any effort
to communicate with any of the
employees or agents of the
plaintiff's law firm in their
office or any other location
will be futile and will not
be effective.

As Mr. Acevedo's affidavit sets forth, Defendants explicitly threatened to fire him if he continues to participate in this lawsuit.. In order to ensure that aggrieved employees are able to assert their FLSA rights free of similar retaliation and intimidation, corrective action, including an injunction against further intimidating tactics, is necessary. Most recently, in a similar case, Judge Cote ordered Defendants to post curative notice at where it would be seen by all employees, and the notice included language prohibiting management from discussing the pending lawsuit with employees. *Pefanis v. Westway Diner, Inc.*, 2009 U.S. Dist. LEXIS 121378 (S.D.N.Y. Dec. 29, 2009).

Accordingly, we respectfully request that the Court schedule a Conference at which the parties can address the issues raised above.

Respectfully submitted,


D. Maimon Kirschenbaum

cc: Sara Sheinkin, Esq.